

1 STATE OF MICHIGAN
2 IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE
3 DETROIT BOARD OF EDUCATION ADVISORY COUNCIL

4 Plaintiff,

5 Case No. 10 00322 PZ

6 ROBERT BOBB, ET AL

7 Defendant.

8 _____/

9 H E A R I N G

10 PROCEEDINGS HAD and testimony taken
11 Before the HONORABLE JOHN A. MURPHY,
12 Circuit Judge of the Third Judicial Circuit
13 Court, 921 CAYMC Building, on TUESDAY, MARCH
14 30, 2010.

15 APPEARANCES:

16 ERNEST JARRETT

17 On behalf of the Plaintiff

18 HANS MASSAQUOI and THEOPHILUS CLEMMONS

19 On behalf of the Defendant

20

21 Reporter: Kathleen Maxwell, CSMR/CSR 0010

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5 DETROIT BOARD OF EDUCATION ADVISORY COUNCIL

6 vs. ROBERT BOBB, ET AL

7 10 00322 PZ

8 TUESDAY, MARCH 30, 2010

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Detroit, Michigan

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Tuesday, March 30, 2010

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1:35 p.m.

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6

THE COURT: Case number 10 00322

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PZ Detroit Board of Education Advisory Council

8

et al vs. Robert Bobb et al.

9

State your appearances on the record

10

for me.

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MR. JARRETT: Ernest Jarrett, Your

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Honor. I am appearing on behalf of the

13

plaintiffs.

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MR. MASSAQUOI: Hans Massaquoi,

15

Your Honor, Special Assistant Attorney General

16

by appointment for Emergency Financial Manager

17

Robert C. Bobb.

18

MR. CLEMMONS: Theophilus C.

19

Clemmens on behalf of Detroit Public Schools.

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THE COURT: Incorporate the entire

21

record into the record and you may now begin.

22

Mr. Jarrett, did you receive all the

23

pleadings and are you prepared, Sir?

24

MR. JARRETT: I am prepared.

25

THE COURT: Gentleman, as well.

1 MR. MASSAQUOI: Yes.

2 THE COURT: Let's proceed.

3 MR. JARRETT: Your Honor, before I
4 proceed, I would ask the court two things if I
5 may.

6 First, I am on medication which causes my
7 mouth to dry so I brought a bottle of water with
8 me and I hope the court doesn't mind that from
9 time to time I may have to take a sip or two.

10 THE COURT: None whatsoever. Let me
11 see if I can get you a Styrofoam cup.

12 MR. JARRETT: This is fine. I am fine
13 with that.

14 THE COURT: Since you mentioned that,
15 that you are on medication, are you OK to
16 proceed?

17 MR. JARRETT: Oh, Yes. Absolutely.
18 Just causes my mouth to dry out from time to
19 time.

20 Secondly, Your Honor, we attached several
21 exhibits to the reply brief that we filed
22 yesterday and because of the volume of paper,
23 there were two documents which were not
24 attached. I had them separately marked and have
25 gone through them with counsel. In fact we spoke
26 about it before we arrived here today and I

1 would like to tender copies of the second --
2 or the RFP, the primary RFP, Request for
3 Proposal, which prompted the bidding process as
4 well as the First Student report.

5 I would like to tender to the court

6 MR. MASSAQUOI: I have no objection.

7 MR. JARRETT: There was going to be
8 another. He has a copy of the second RFP which I
9 can't put my fingers on at the moment.

10 MR. JARRETT: I have no objections to
11 that either.

12 MR. MASSAQUOI: Can I have that marked
13 real quick, Your Honor.

14 THE COURT: Yes.

15 MR. MASSAQUOI: Defense Exhibit No. A
16 has been marked.

17 MR. JARRETT: Your Honor, then, I have
18 no objection.

19 MR. MASSAQUOI: He has no objection
20 and I am offering it.

21 MR. JARRETT: That's correct. When we
22 were here last Friday, the court indicated --
23 shall I proceed, Your Honor?

24
25 THE COURT: I am looking to try to put
26 these in order if there is no objection. You

1 don't have a problem in my reviewing them
2 prior to my making the decision.

3

4 MR. JARRETT: Yes.

5

6 THE COURT: They are quite voluminous.

7

8 MR. JARRETT: That's why I had to
9 attach them to the reply brief.

10

11 THE COURT: Fair enough. Go ahead.

12

13 MR. JARRETT: When we were here last
14 week, Your Honor, during the abbreviated
15 hearing that we had, the court cited Alliance
16 for the Mentally Ill of Michigan versus
17 Department of Community Health at 231 Mch App
18 647 and Fancy vs. Egrin, 177 Mich App 714 1989
19 case standing for the proposition or standing
20 for the articulation of the test which a moving
21 party must meet when it seeks a preliminary
22 injunction from the court which is what we are
23 here today seeking.

24

25 The test is very settled and incorporated in the
law over decades so it sets forth a four-prong

1 test. So it would be the plaintiff's liklihood
2 of success on the merits in the case.

3
4 The risk of irreparable injury to the
5 plaintiffs, the risk of the injury to the
6 plaintiffs, excuse me, to the opposing party
7 would outweigh the risk of harm to the moving
8 party and the public interest, if any as it may
9 be impacted and I am prepared to address each
10 of those separately, Your Honor.

11 I begin with the likelihood of success on the
12 merits.

13
14 Your Honor, the plaintiffs have alleged in
15 what we believe has been demonstrated in the
16 exhibits we have attached to our motion that
17 there was a tainted bidding process; that this
18 process was tainted throughout. Even before the
19 bid process was the taint began and it was
20 tainted because it was skewed in favor of First
21 Student and against the vendors who have been
22 providing services to Detroit Public Schools
23 Transportation Services in particular to Safway
24 Transportation Company which has been a
25 transportation vendor with the Detroit Public
26 Schools since 1975.

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I think it is important that the Michigan Civil Jurisprudence Section -- the chapter on Public Contracts Section 20 where it said that the purpose of creditor bids for municipal contracts and required contracts to be let to the lowest bidder is to guard against favoritism, improvidence, extravagance, fraud and corruption in the awarding of municipal contracts.

We submit that the bid process in the instant case has perverted those very purposes and I would submit further that if the court would look to 64 AmJur 2d, Public Works Contracts Section 36, we have a further discussion which I think amplifies what I have just quoted from Michigan Civil Jurisprudence

It reads in part "... contracts awarded without strict compliance with bidding requirements will be set aside even when there is no corruption or adverse effect upon the bidding process and even where it would save the entity money because it is important to maintain

1 the integrity of government and because of the
2 ease with which public goals undermine
3 competitive bidding requirements may be
4 surreptitiously undercut. Such requirements
5 necessarily imply equal opportunities to all
6 whose interests and inclinations may impel them
7 to compete at the bidding."
8

9 Your Honor, we submit there has been no equal
10 footing in this process. In fact it was skewed
11 from the beginning. I think you can start with
12 the fact that First through its subsidiary
13 corporation, First Group was brought in by Mr.
14 Bob, Defendant Bob purportedly for the purposes
15 of performing an independent assessment and
16 evaluation or audit of the Detroit public
17 education, Detroit Public Schools Student
18 Transportation Systems.
19

20 In the very consulting contract which was,
21 which incorporated the agreement between the
22 parties, paragraph 19 which is Exhibit A to the
23 reply brief that we filed yesterday specifically
24 reserves the right for First Student to
25 participate in bidding, securing or otherwise

1 seeking Detroit Public School's business
2 including the student transportation contract.
3

4 So we have a situation which is inherently a
5 conflict of interest. On the one hand you want
6 an independent consultant to come in and
7 evaluate the system. On the other hand that very
8 entity that is going to do the audit has an
9 incentive to do the audit in such a way as to
10 ``place itself in such a way as to place itself
11 in a good position to acquire additional
12 business and in this particular instance that
13 additional business would be a five-year
14 contract worth approximately \$113 million
15 renewable without further bidding for an
16 additional five years. So you have potentially
17 \$226 million at stake.

18
19 You say to a company, please come in and
20 perform an independent objective truthful and
21 accurate audit. I think when you begin with
22 taint in the process, you can't cure it later on
23 and that is, I think, inherently a conflict of
24 interest.
25

1 Now First Student comes into Detroit
2 Public Schools Transportation System. They have
3 unprecedented access for five weeks and as I
4 indicated on Friday, I erroneously indicated
5 that was five months in the complaint but -- and
6 I will address that in the form of an amendment
7 but it is five weeks. Comes in, they have
8 unprecedented access to the personnel, the
9 entire operation, the entire Detroit Public
10 School's Transportation Department operation is
11 subject to their inspection, alterations and
12 otherwise information-gathering as part of this
13 audit

14 No one else was given that opportunity.
15 Safeway Transportation, ABC Transportation, DHT
16 Transportation, those transportation vendors who
17 have provided transportation services for the
18 past four years were not given that access
19 either before or during this audit.

20
21 That would be the case as well for Durham
22 Transportation and any other bidders who
23 participated. So First Student enjoyed an
24 incredible advantage by coming in and having an
25 opportunity to gather information in the bid
26 process.

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Now, after they performed this five-week audit, they forwarded to Mr. Bobb a report of approximately 100 pages in length and which I believe is one of the exhibits although I can't tell you which number it is. It is probably No. 1 I tendered to the court earlier. In that the court sets forth a number of the findings --

MR. MASSAQUOI: Pardon me. I am sorry to interrupt. I just asked him can you identify for the record so the record is clear what document counsel is talking about. I know the document but just so the record is clear. What exhibit has been marked as number one?

MR. JARRETT: I don't --

THE COURT: Are you talking about the exhibit that has been marked as exhibit --

MR. MASSAQUOI: Yes.

THE COURT: We must speak only one at a time so that my court reporter can take everything down.

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MR. JARRETT: Absolutely. It has been marked Your Honor. It is right on your counter next to the top document. What exhibit number is that?

THE COURT: This is Exhibit No. 2.

MR. JARRETT: Exhibit 2 is what I am referring to. That is the First Student report, Your Honor.

Now in Exhibit No. 2, it says for as many of the findings, a lack of information but certainly not all of it that was gathered by First Student during this audit, it sets forth its recommendation and it also sets forth various different areas in which it believes that Detroit Public Schools can save money.

Now without regard to the fact that that report in and of itself amounts to a little more than advertisement for the First Student as evidenced by the first two pages of the report which First Student proclaims itself to be the worldwide leader in school bus transportation and

1 pronounces all of its virtues, advertisement
2 for First Student becomes the report and
3 recommendation to Mr. Robert Bobb and it also
4 becomes in essence the revised operational plan
5 for DPS.

6 Now what's important about that is this. As
7 unfair as it was to all of the other bidders to
8 not have the same access as First Student,
9 certainly a 100 page report only condenses and
10 highlights what information they were able to
11 gather during the five weeks, the five-week
12 audit. They certainly had other data, other
13 information, notes that were not reduced to
14 that report and which they enjoyed an inherently
15 unfair advantage over the other bidders but
16 nevertheless to the extent that the report does
17 in fact highlight &&& their audit, when there
18 was a pre-bid meeting and you have to understand
19 there were two RFPs

20 The first Request for Approval suggested that
21 the only routes that were going to be offered
22 for bidding were those routes which were
23 currently, then currently and still are being
24 operated in-house by DPS bus drivers; the routes
25 which have been the subject of the contracts
26 with the first RFP.

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So, the plaintiffs who were already contractors with DPS as well as one or two other bidders didn't have access to the information First Student had and when they came to a pre-bid meeting, they requested copies of this report and Mr. Terry Burgess would not allow copies of the report to be given to any of them.

Now, I don't know what evidence, what rationale justifies such withholding of information to the entities or businesses that were going to bid on this contract. Certainly the more information they had available to them, the more precise their bidding could be.

That's, my comment. It is logical. It is something that anyone could intuitively reach, a conclusion anyone could intuitively reach but we don't have to rely on logic or intuition. All you have to do is look at the two pages of the report itself and Your Honor, on Exhibit 2, I flagged the page because the numbering of the pages in this report is very unusual and it is difficult to follow. But if you look at Section 2 page 7 -- the flagged page that I have in the exhibit, Your Honor --.

1 THE COURT: Yes, sir.

2

3 MR. JARRETT: The First Student Rights
4 and Associates provide a detailed list of
5 operating information --

6

7 MR. MASSAQUOI: I want to make sure we
8 are on the same page.

9

10 MR. JARRETT: Section 2. It is very
11 bizarre.

12

13 THE COURT: All right, gentlemen, just
14 as instruction to my court reporter. When you
15 two are talking, just kind of whisper so she
16 knows it's not part of the discussion between
17 the both of you and not part of the record
18 otherwise it will be very difficult.

19

20 You can repeat that by the way.

21 MR. JARRETT: Your Honor, at the bottom
22 of page 7, the page I flagged, provide detailed
23 district operating information.

1 ²In this setting, First Student says,
2 "...bidders will submit more refined and
3 confidential proposals with accurate information
4 about the operating environment which will
5 result in reduced pricing. Lack of clear
6 definition causes bidders to hedge on pricing to
7 account for unknown costs that may occur during
8 the course of the contract term. Removing the
9 unknown component will allow bidders to bill
10 rates of actual costs. It makes sense. It is
11 logical. You give the bidders more information,
12 they can give you more precise calculations as
13 to what their bids should be. But Mr. Burgess
14 instead of doing what is logical, instead of
15 doing what the DPS consultant says he should do,
16 instead does the exact opposite. He withholds
17 the report over the protests of the bidders
18 without explanation.

19 To this date we have no explanation for why
20 the report could not just simply have been given
21 to the bidders at the time that they were to
22 begin their pricing of their bids.

23

24 The bidders continue -- well, initially, they
25 were informed that First Student would not be

1 permitted to participate in the bidding. Now
2 Mr. Burgess had to know that that wasn't true
3 because right in the contract it says consulting
4 contract, that they would be permitted to
5 participate in the bidding just by the fact that
6 there are supposed to be an independent
7 consultant. But nevertheless, having
8 misrepresented those things to the bidders and
9 without explanation withholding this report, the
10 bidders then began their pricing process and
11 ultimately it was learned that First Student
12 would in fact be permitted to participate in the
13 bidding.

14 So the bidders, most especially Ms. Patricia
15 Whitlow, who is the president of Safeway
16 Transportation Company, raised her own protest
17 again about not having the same information
18 available as First Student and at minimally she
19 should have access to the report.

20 Now mind you, there was no belief that that
21 would fully compensate or level the playing
22 field between the information available to
23 the bidders other than First Student and the
24 information available to First Student .

1 First Student had been in DPS for five
2 weeks but at least the 100-page report should be
3 accessible to the bidders.

4 At that point Mr. Burgess relented and said
5 that each of the bidders would have an
6 opportunity to review the report but he was not
7 going to make copies available to them. Again
8 without explanation and frankly I believe it's
9 inexplicable.

10

11 My client Ms. Whitlow -- and she is my client
12 in another action.

13

14 Ms. Whitlow went to the offices of Detroit
15 Public Schools for the purposes of reviewing
16 this report and when she arrived she found per
17 Mr. Burgess's instructions that she would only
18 have 30 minutes to review the report and that
19 she could not take notes while she was reviewing
20 them.

21 Now Your Honor , I have estimated this report
22 to be approximately 100 pages because of a very
23 unusual page numbering system it really doesn't
24 -- you can't really tell how many pages there
25 just from the numbers and I have not counted the
26 sheets of paper but you have it before you.

1 Certainly it is not a document that one can
2 digest in 30 minutes and retain whatever they
3 have been able to digest in that 30 minute
4 period without taking some notes.

5
6 Why would you bill in such an unreasonable,
7 such an unreasonable withholding of information,
8 such an unreasonable and limited review of the
9 document but for the fact that you have some
10 time.

11
12 There can be no explanation other than
13 that, Your Honor. So, in any event, bids were
14 submitted after this sham of a review of the
15 report and before those bids resulted in that
16 award, Detroit Public Schools decided that it
17 was going to expand the offering of the contract
18 not just to the in-house DPS routes but to all
19 of the routes including those which had been
20 serviced for years by local vendors.

21 .

22 THE COURT: I don't mean to interrupt you. If
23 I am following your argument correctly that's
24 the same argument that has already been made
25 and the points that you are covering now are
26 contained in the briefs. So we have limited time

1 here and I don't mean to take away from your
2 argument and everything else.

3

4 I have reviewed all of the documents with the
5 exception of the three this afternoon that you
6 have given me a little while ago. . I well
7 know that under tab-C you submitted the
8 affidavit of Patricia Whitlow correct?

9 .

10 MR. JARRETT: Yes.

11 THE COURT: Why would that have been
12 submitted?

13 MR. JARRETT: That affidavit augments
14 the allegations in the complaint to the extent
15 that it identifies some specific things which
16 can be found from the report which would have
17 affected the Safeway Transportation's pricing
18 which related to information that was not
19 available to Safeway but was available to First
20 Student . It also sets forth in detail other
21 factors such as the fact that the bids that they
22 award was announced. Ms. Whitlow went to the
23 office of ABC Transportation and had a
24 conversation with Mr. Johnny Grant who is the
25 president of ABC Transportation and unbeknownst
26 to him at that particular time through an

1 application on her cell phone she was able to
2 record their conversation.

3

4 THE COURT: Was that legal?

5 . MR. JARRETT: It was not by telephone. I
6 believe there is nothing that prohibits that.
7 Over the telephone it would not have been legal.

8 THE COURT: Well maybe that's an issue
9 I'll have to address later but there is a
10 question that may be raised in terms of if
11 that's contrary to Michigan statutes or not.
12 That's one point.

13 The affidavit is duly signed and
14 notarized?

15 .

16 MR. JARRETT: Yes, Your Honor.

17 THE COURT: It also could appears to
18 contain hearsay statements. So the question has
19 to be raised, is it proper for the court to
20 consider these statements in terms of making the
21 decision. I will let you address that issue.

22

23 .

24 MR. JARRETT: Well, Your Honor , it
25 relates to which statements the court is
26 specifically speaking about but however with

1 respect to the recorded conversation between
2 herself and Mr. Grant, which we have provided a
3 transcript for, the affidavit indicates simply
4 that she has compared the transcript to the
5 recorded conversation and that the transcript we
6 looked at is in fact true and accurate, a true
7 and accurate transcription of the recording. We
8 have the recording available for the court
9 should that be required. So I believe for the
10 purpose of this particular hearing where the
11 court is looking to see whether or not there is
12 a likelihood of success on the merits, I think
13 that the court can take that into account. I
14 don't believe that the strict rules of evidence
15 would apply.

16 I also believe that if necessary I can call
17 Ms. Whitlow to the stand and lay a foundation
18 for the circumstances under which the statements
19 were made which will fall well within any one
20 of the hearsay exceptions.

21 And finally, Your Honor , I took the
22 deposition of Mr. Grant last week and one of the
23 questions that I asked him was whether or not
24 the -- first of all he identified himself as the
25 speaker in the recording. He listened to it. He
26 said that was him. He recalled the meeting, he

1 recalled the discussion and I asked him if
2 the things that he said in the meeting were true
3 and he said that they were.

4 Now, I don't have a transcript --
5
6 .

7 THE COURT: That doesn't make it legal
8 and then the question is, if you are asking for
9 equity as part of the process that you also must
10 come here with clean hands.

11
12 MR. JARRETT: Your Honor, I don't
13 believe our hands are soiled in the least. I
14 represent parties who are not parties to that
15 conversation and we have, we are presenting to
16 the court the substance of the conversation, the
17 substance of which would reveal that after the
18 first RFP was submitted, Mr. Grant was given
19 information on the bids of his competitors.
20 Safeway was not given any such information and
21 certainly when there was a second RFP that was
22 filed in January, he had the benefit of knowing
23 the basic pricing structure of the competitors;
24 could expand that and project that from the
25 limited in-house routes that were out for bids
26 to the projection of over all of the routes. It

1 was simply a matter of quantifying further
2 the routes that were being taken into account in
3 the second RFP that weren't subject to the first
4 one.

5 THE COURT: Okay, go ahead

6
7 MR. JARRETT: So, according to Mr.
8 Grant, he had this information. No such
9 information was given to any of the other
10 bidders including Safeway or Durham or DHT and
11 therefore he had a significant advantage in the
12 re-bidding process and I think that you can
13 infer that if one of the contract awardees had
14 access to this information that both of them
15 did.

16
17 In January, according to the second RFP which
18 is a document which Mr. Massagoi had marked as I
19 believe that it's probably Exhibit 3 for the
20 purposes of today's hearing, the second RFP, all
21 this was supposed to submitted by, I believe,
22 January 15, 2010 at 11 in the morning. After
23 that, no other bidding material was to be
24 accepted.

25 There was not to be any exchange of
26 information or release of information from DPS

1 to any of the bidders other than the
2 identities of all of the bidders.

3
4 What we know is that on February 2, almost
5 three weeks later that Mr. Grant was called into
6 the offices by Mr. Glaster, Leon Glaster, who is
7 the defendant in this action, seated in the
8 courtroom here today someplace and Mr. Terry
9 Burgess and what happened there undermines the
10 very bid process in the first place.

11
12 What happens there is that he was told -- he
13 is given certain information and he was allowed
14 to submit a modified bid. None of the other
15 vendors were permitted to do that. Safeway
16 certainly wasn't. I don't believe DHT was, I
17 don't believe Durham was but we do know that he
18 was and we believe that so was First Student

19
20 If you look, Your Honor, what we have
21 attached to our reply brief as Exhibits D. and
22 E., if you look at Exhibit D., that is the
23 timely-filed RFP for the second -- excuse me,
24 response to the second RFP by ABC. If you look
25 at E, what you have is clearly identifiable as a
26 last and final offer submitted to Detroit Public

1 Schools by ABC and there are several
2 modifications if you look at and compare the
3 two. Number one, ABC's daily rate is reduced.

4 Mr. Bobb's attorney speaks to the fact that
5 well this is about pricing and if First Student
6 has the best prices, that's why they got it in a
7 fair and square bid process. That's what they
8 say and that's why they are here to oppose us.
9 But clearly, Your Honor, if you submit bids in
10 the fall and release information on that and you
11 submit bids again in the winter and then
12 selectively allow certain individuals or certain
13 companies to submit modified bids, then we don't
14 have an even playing field. We don't have a
15 fair, square process. We have selective and
16 favored negotiations with certain participants
17 in the bidding process to the exclusion of
18 others and in fact we don't have a bid process
19 at all under those circumstances.

20
21 Your Honor, I have cited authority in my
22 brief which says that a public body has no
23 authority to favor one of the bidders by
24 negotiations with the bidder privately. Such
25 private and selective negotiations are improper
26 per se and we cite the case of Attorney General

1 vs. Public Lighting Commission, 155 Michigan
2 207 a 1908 case and Whitney vs. Common Council
3 for the City, excuse me, for the Village of
4 Hudson, 69 Mich 189. That's an 1888 case.

5
6 Also draw the court's attention to Civil
7 Jurisprudence Public Contracts Section 20 on
8 that very point. So that the very improper type
9 of negotiation with selective bidders to the
10 exclusion of others, which these cases address,
11 is precisely what occurred which enabled ABC
12 to submit a bid, a secret bid because none of
13 the other bidders were aware of it and when it
14 was done, a secret bid to DPS after the bid
15 process was purportedly closed per the language
16 of the RFP itself.

17 He submits this bill and it is still
18 not to the satisfaction of Messrs. Glaster and
19 Burgess who met with Mr. Grant on February 2 and
20 during that meeting, oh, I want to go back for a
21 minute. I'm sorry Your Honor. If you compare
22 Exhibits D. and E. you will see that Mr. Grant's
23 pricing, his daily rates were modified in the
24 second -- or excuse me, best and final which was
25 after his third written bid. They were reduced
26 at that point.

1 Under the section which goes to the
2 purchase of the DPS fleet of buses, his
3 initial bid filed in January, he indicated that
4 he would pay the fair market value of all those
5 buses based upon an independent appraiser's
6 appraisals of those buses at prices -- --
7 mutually selected by DPS and ABC.

8 Now the best and final offer, suddenly his
9 offer is \$2.6 million and change.

10

11 This clearly came after he had an opportunity
12 to be coached on that by Messrs. Burgess and
13 Glaster.

14

15 Even after submitting this third secret bid,
16 that apparently was not to their satisfaction.

17 On February 2 they met further and there
18 were further discussions as is outlined in the
19 transcript of the conversation between himself
20 and Ms. Whitlow stated at various points
21 throughout, and I draw the court's attention to
22 page 14 of that transcript which is Exhibit C,
23 Your Honor, beginning at line 21. This is in
24 mid-flow of a particular comment he was making.

25 THE COURT: Again, you are talking
26 of a conversation between Whitlow and Grant?

1

2

MR. JARRETT: Yes.

3

4

THE COURT: You are talking about the
recorded conversation?.

5

6

MR. JARRETT: Yes. I am, Your
Honor.

7

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9

THE COURT: I haven't been given
authority to be persuaded one way or the other
in terms of your position.

10

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I will indicate to you where I am coming from
and then I will allow you to argue but please
bear in mind is that we are running short on
time and the longer you concentrate on
chronology and things, it may not be an
effective point to think that are crucial to
your argument.

18

19

20

Your opposition is very well laid out in
terms of the brief and the exhibits and
everything else.

21

22

23

24

According to MCL 750.539(c), recording a
conversation without consent of all parties is
illegal.

25

26

I will now cite to you the following cases
that support the Court's position. One is People

1 vs. Stone, Michigan Court of Appeals opinion
2 234 Mich App 117 and I will read the head note
3 portion of it for the sake of brevity. It says
4 the court held that Michigan Eavesdropping
5 Statute did differentiate between wired
6 electronic and oral communications but for
7 texted private conversations. The court
8 concludes there that the interception of any
9 part of a private disclosure of others without
10 their permission was prohibited.

11 In addition to that I will cite the case of
12 People versus -- I'm sorry, it is the same case
13 but this is from the Michigan Supreme Court at
14 460 Mich 558.

15 Again, all the technology provides the means
16 for eavesdropping. The Michigan Eavesdropping
17 Statute specifically protects citizens against
18 such intrusion therefore it is not unreasonable
19 for a person to expect privacy in a conversation
20 although he knows the technology makes it
21 possible for others to eavesdrop on such
22 conversations."

23

24 It would appear based upon these authorities
25 that the position taken -- The statute I read
26 at 539(c) is as follows:

1 --- for your benefit.

2 "...Any person who was present or who was not
3 present during a private conversation who
4 willfully uses any device to eavesdrop on a
5 conversation without the consent of all parties
6 thereto or who knowingly aids, employs or
7 procures another person to do the same in
8 violation of the statute is guilty of a felony
9 punishable by imprisonment in a state prison for
10 not more than two years or a fine of not more
11 than \$2000 or both and again, I would note that
12 the affidavit of Ms. Whitlow is attached here
13 under tab B. It is a sworn affidavit in which
14 she indicates that she recorded the statement.

15 Paragraph 13.

16 "...on the morning on which Mr. Bobb
17 announced the contract award, I went to the
18 offices of ABC and had a discussion with Mr.
19 Grant with an application on my cell phone I
20 was able to record a substantial portion of the
21 conversation..." and in parentheses she says, "...
22 the phone stopped recording before we stopped.
23 However Mr. Grant was unaware that our
24 conversation was being recorded."

25 It appears to be in conflict with the case
26 and the statute and perhaps - I wo't make the

1 conclusion here, but perhaps she just
2 admitted to violating this Michigan statute and
3 created a felony.

4 Is Ms. Whitlow here?

5 MR. JARRETT: She is, Your Honor.

6 THE COURT: Where is Ms. Whitlow.

7 (Identifies herself)

8 THE COURT: You may continue.

9 MR. JARRETT: Your Honor, with
10 respect to the negotiations which were secret
11 negotiations which went on even after the
12 submission of the modified bid by ABC, Mr.
13 Burgess - we have attached Exhibit F, forwards
14 to Mr. Grant a new bid sheet which he has
15 prepared and in that bid sheet he basically
16 informs Mr. Grant as to what his bid would be.
17 And, if you look at Exhibit F., we have the e-
18 mail of Terry Burgess to Mr. Grant. It says
19 please review the attached. I will call to
20 follow up. Attached to that was the bid sheet
21 which was now prepared and submitted by ABC. It
22 was prepared presumably by Mr. Burgess and
23 forwarded to ABC by Mr. Burgess and when he
24 instructed him this was going to be his bid and
25 then following that, there was the announced
26 award, I believe, on February 23.

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So, what we have identified, I think is a clearly tainted process and I think there is ample and significant evidence demonstrating that the -- to which most of which is not and cannot be refuted by Mr. Bobb nor anyone else participating.

The next issue or element that we have to demonstrate is that there be no irreparable injury to the plaintiffs if the court does not intervene and on that point Your Honor, I would point out a couple of things. First that as we alleged in the complaint, First Student has a very troubled and problematic service history in various districts around the country; has no service history with DPS but it has a history of things ranging from its own manager, operations manager in Indianapolis being cited with two counts of failure to maintain a school bus in Indianapolis by the Berrien County prosecutor.

We have that 25 percent of their buses devoted to that school district were put out of service by inspection by the Indiana State police.

1 In Ohio in 2007, First Student was put on
2 probation for its failure to properly conduct
3 background checks of its drivers and then last
4 year, proceedings were initiated for First
5 Student's violation of that probation.

6
7 In Illinois, perhaps the most troubling of
8 them all, we have five instances of drivers
9 devoted to their Chicago route being arrested
10 and charged with sexual misconduct with respect
11 to the students, some of the female students
12 that they are charged with driving including one
13 who is charged in 2009 who had been fired from
14 the Joliet Township Illinois School District for
15 the very same thing.

16 So while I understand that the probation in
17 Ohio and the instances in Illinois are in two
18 different states, much less two different
19 districts, I think that there is some evidence
20 and some relationship between a company being
21 cited background checks in one state and having
22 five instances within an 18 month period of
23 sexual misconduct with respect to its drivers
24 transporting the Chicago students to and from
25 school. And that does not even take into account
26 the DUIs, the high-speed chases in school buses

1 that occurred by First Student drivers in
2 that district.

3 Mr. Massquoi in his brief said that
4 certainty a company of that size over the many
5 years, some of the drivers will misbehave. And
6 there is some merit to that. You can't control
7 everybody's conduct all the time including those
8 you employ. In 35 years of business, Safeway has
9 never had any such problems, not one. But
10 nevertheless you would think that that would at
11 least provide one of the criteria by which the
12 companies would be evaluated. What is your
13 service history?

14

15 THE COURT: How is that supported
16 by anything submitted to the court?

17 MR. JARRETT: It is supported by the
18 fact we have allegations that have not been
19 denied. There are two allegations in support of
20 the brief in opposition that were executed by
21 First Student officials or representatives and
22 they are denying a lot of things. They tried to
23 deny things that are undeniable but they didn't
24 touch that. They didn't deny a single one of
25 those.

26

1 We have information, we have information
2 and belief that these facts are in fact true and
3 if they weren't in fact, whether they are true
4 or not, they are at least out there to be
5 inquired about and they were not part of the
6 evaluation process. It was not something that
7 the RSP called for and we submit that the RSP
8 was drafted in substantial part by First Student
9 in the first place so certainly it is not going
10 to include in the criteria something which would
11 not look favorably for them in their bid for the
12 contract.

13 Now my clients, Ms. Liggins is the parent of
14 three DPS students, one of whom is already on a
15 bus every day going to and from school. Two of
16 whom will be joining them as soon as they make
17 the transition to middle school.

18 She doesn't want -- she doesn't want her
19 children having to get on the bus by a company
20 that has not been properly vetted when there is
21 ample information about problems all over the
22 country. It has the highest accident rate in
23 Duval County, Florida.

24

1 THE COURT: Please turn off
2 your phone whoever is in here. Please turn off
3 your phone. Go ahead sir.

4 MR. JARRETT: In Buffalo New York,
5 First Student buses were understaffed to the
6 point where students were being picked up 45
7 minutes late because they didn't have enough bus
8 drivers to drive the routes. I have already
9 talked about problems in Indiana and Illinois
10 and in Ohio. And these matters are matters which
11 DPS may have some explanations for -- excuse
12 me, First Student may have some explanations for
13 but they at least should have been part of the
14 evaluation process and Mr. Bobb did not make any
15 inquiries along these lines and certainly it is
16 a criteria, criterium that had it been used
17 that it would have very favorably benefited the
18 local vendors, at least Safeway if not others
19 and would have been something that should have
20 been taken into account.

21
22 Ms. Liggins does not want her children to be
23 exposed to those kind of problems. This is her
24 only recourse.

25 I have Ms. Payne who is a grandmother among
26 other things as a plaintiff in the action. She

1 doesn't want her grandchildren exposed to a
2 bus company that can't seem to get it together
3 wherever they go and who acquires a contract
4 award through a tainted bid process, whether
5 it's a history of five sexual predators in one
6 district within 18 months or the fact that
7 there is a high accident rate in the school
8 district or that they can't even stay to a
9 probationary status and adhere to that in their
10 home state of Ohio.

11 Those risks of harm are what my client
12 children and grandchildren and all of the
13 children, all of our children and that's where
14 the other plaintiff comes in, the Detroit Board
15 of Education Advisory Council which is an
16 advocacy group that speaks on behalf of all the
17 students of the DPS.

18 They don't want to have a company that seems
19 to not be able to do anything other than collect
20 its paycheck in these districts without some
21 sort of problems when there is ample evidence
22 that the businesses, the vendors already in
23 place have performed admirably well for decades
24 and were not -- they were disallowed the
25 opportunity to participate in a fair bid
26 process.

1 So, I believe Your Honor, we have
2 demonstrated irreparable injury. I don't believe
3 that there is any potential injury to the
4 defendants in this case.

5 They suggest they have to meet this May 17
6 deadline. That's an illusory deadline. The
7 history as evidenced in Ms. Whitlow's affidavit
8 is that the contract for transportation vendors
9 have never been finalized before late summer
10 prior to the school year sometime around the
11 month of August. So May 17 is a date that was
12 decided by First Student for First Student's
13 benefit and they want to go out and they want to
14 secure the contract, they want so much momentum
15 going towards executing this contract that it
16 can't be reversed later and I submit that there
17 is not going to be any injury to them if we
18 ultimately do not prevail on the merits. And
19 certainly if the court would entertain this
20 matter on an expedited basis and could dispose
21 of it well in advance of that time needed to put
22 in place whatever transportation company or
23 companies will be ultimately contracted with
24 DPS. whether it be the current awardees or
25 different awardees.

1 And finally Your Honor, the last issue that
2 we have to address is the public interest.

3
4 Your Honor, it is in the public interest to
5 go about a bid process which is fair and which
6 will invite objectively good, precise and
7 refined bids where there is true competition
8 rather than a façade of competition to favor a
9 predetermined awardee and to eliminate someone
10 who has been in business for 35 years and has
11 done quality work all of those years. The public
12 interest would demand integrity in the award
13 process. We have anything but that in this
14 particular process and so the public interest, I
15 believe, would require this court to enter a
16 preliminary injunction, maintain the status quo,
17 put this matter on an expedited docket so that
18 we can conduct what further discovery is needed,
19 come back and try the case on the merits should
20 that be necessary.

21

22 Does the court have any questions?

23

24 THE COURT: No. We will hear from
25 the other side.

26

1 MR. MASSAQUOI: Your Honor,
2 could I get some water real quick.

3 THE COURT: Yes, sir.

4 MR. MASSAQUOI: Again, Hans
5 Massaquoi on behalf of Defendant Bobb.

6 Your Honor, we have had an opportunity to
7 read the briefs and we have listened to the
8 plaintiff and we have a few things as you might
9 imagine to say.

10

11 First, with all due respect and with all
12 deference to Mr. Jarrett, frankly I think that
13 he has, he is under great misconceptions most
14 probably because he didn't read the very
15 documents completely that he has submitted to
16 the court.

17

18 I will go through those documents in specific
19 areas which essentially refutes everything that
20 he has said today about the alleged taint on
21 the process; on the DPS bidding process subject
22 in this case.

23 I would like to start out also by indicating
24 to you that make no mistake about it, we have
25 the advisory Council and two
26 plaintiffs, individuals who are named as

1 plaintiffs but make no mistake this case is
2 being driven by Safeway. That's why we don't
3 have affidavits attached to any of the
4 plaintiff's documents except an affidavit from
5 Safeway's president. We have surreptitiously as
6 the court has noticed, surreptitiously recorded
7 statements by Safeway's president. Neither of
8 the other two plaintiffs in this case submitted
9 affidavits or gave any support, virtual support
10 to these allegations. No one from the advisory
11 Council submitted anything in support of these
12 allegations and even Counsel slipped and said my
13 client Ms. Whitlow and then said well I am
14 representing her in another case.

15 Let me tell you, this case is all about
16 Safeway. Safeway doesn't have standing to be
17 here. They have another case in federal court
18 right now and this is nothing other than Safeway
19 trying to get a second bite at the apple because
20 they are dissatisfied with the fact that they
21 lost the bid and this is just an attempt to
22 upset the apple cart.

23

24 I am going to go through here quickly, Your
25 Honor. I listened to your admonitions about

1 trying to move it along and I'm going to try
2 to do that.

3

4 THE COURT: I'm not sure that's an
5 admonition.

6

7 MR. MASSAQUOI: Maybe that's wrong.

8

9 THE COURT: It is my responsibility
10 to make sure the lawyers stay on point that
11 based upon the limited time we have that -- if
12 you wish me to admonish you, I'm all for that. I
13 can assure you there is a difference between
14 admonishment and simply control of the process
15 as the court rules give me the authority to do.

16

17 MR. MASSAQUOI: I've been admonished so
18 many times by my father. I just assumed that was
19 another one.

20

21 THE COURT: I am old enough to be
22 your father. Let's proceed.

23

24 MR. MASSAQUOI: First of all
25 let's go right to the issue of the likelihood of

1 success on the merits here. Plaintiff's
2 likelihood of success.

3 First of all I would like you please -- do
4 you have our brief, that is Defendant Bobb's
5 brief and Exhibit 2 attached to it?

6
7 THE COURT: I will hold it up. Is
8 that what you're referring to?

9
10 MR. MASSAQUOI: That is it.

11
12 You will see in there -- first of all it is a
13 contract between the state of Michigan and
14 Robert C. Bobb. It says to emergency financial
15 manager for the Detroit Public Schools pursuant
16 to 1990 Public Act 72. I ask the court to look
17 at the bottom of that page where it says number
18 one. First page, bottom of page, you will see
19 where it says power of the emergency financial
20 manager.

21
22 It says upon appointment the emergency
23 financial manager shall immediately assume
24 control over all fiscal matters and shall make
25 all fiscal decisions for the district.

26

1 Also on the next page at the top, Section
2 1.2 it says the emergency financial manager
3 shall have all powers enumerated in the act
4 which include but are not limited to the
5 following. And if you look on Section C directly
6 below that it says, negotiate, renegotiate,
7 approve and enter into contracts on behalf of
8 the district.

9 Let me ask the court to please turn to page
10 6-sub-9 of that same document.

11 Do you see where it says, Your Honor, the
12 heading 12?

13 THE COURT: Yes.

14 MR. MASSAQUOI: It says limitation
15 upon liability.

16 It says, "... the state of Michigan, the
17 governor, the superintendent of public
18 instruction and the emergency financial manager
19 are not liable for any allegation or claim
20 against the district resulting from actions
21 taken in accordance with the act or this
22 contract and below that it says, "...when acting
23 under this contract, the emergency financial
24 manager shall be deemed to be engaged in the
25 exercise of a governmental function and shall be
26 immune from liability for any action taken which

1 he reasonably believed to be within the scope
2 of his authority granted by the statute under
3 this contract."

4 The point there is as I am pointing those
5 out, those sections is that not only has Mr.
6 Bobb been given absolute authority over matters
7 in correcting their fiscal situation in the
8 public schools, he has absolute immunity in
9 doing that. He has governmental immunity.

10 Now, I'm just going to move forward.

11 Also, contrary to what Counsel says, I do not
12 believe -- and I won't belabor this point --
13 that the plaintiffs have established any
14 standing as taxpayers. In fact, there is no --
15 in Michigan, it has long been the trend that
16 individuals don't have a right to indicate the
17 rights of the public unless they show special
18 harm. These plaintiffs have not shown any
19 special harm. In fact Mr. Jarrett just argued
20 that they have an interest in seeing, along with
21 the public, that there will be a valid and --
22 whatever the term was, bidding process and that
23 children in the public schools are safe from
24 busing companies that may have had some past
25 violations either under the law or some service
26 violations. I am paraphrasing Mr. Jarrett. But

1 the point is this advisory council, we don't
2 even have an affidavit from them. We don't know
3 what their mission statement is. They have just
4 come into the case and all of sudden they
5 advocate on behalf of the public. I don't really
6 know that the public would even want their
7 advocating on behalf of them. There is nothing
8 to establish their right to come into this court
9 and make these arguments.

10 One of the -- only one was even listed as a
11 taxpayer and as Mr. Jarrett just indicated, she
12 is listed solely as the grandmother of a student
13 who goes to public schools.

14 Going further, Your Honor, even further,
15 and more fundamental to this case is that
16 plaintiffs have not shown that the DPS or the
17 emergency financial manager violated any law
18 whatsoever. We pointed out in our brief and
19 there has been no response to it -- well Counsel
20 has cited in which he says the public -- he
21 cited AmJur which No. 1, isn't authoritative in
22 this state. He cited 1800 - cases from the
23 1800s, and what Your Honor -- first of all the
24 Michigan legislature has preempted this field on
25 this issue.

1 As I've pointed out at MCI 380.1274, the
2 Michigan legislature specifically addressed what
3 the procurement requirements are for the DPS.
4 They addressed this issue and there they said
5 very clearly that the only regulation that they
6 put on the DPS is governing under 380.174 the
7 procurement of supplies, competitive bidding
8 requirements, exemptions, policy preference for
9 Michigan-based businesses, source of funds for
10 payment, purchase leasing or rental of heating
11 and cooking equipment.

12
13 They specifically left out contracts
14 governing services. They could have easily --
15 here the legislature is talking about what the
16 DPS has to do to run a procurement department
17 and they specifically leave out services and
18 there is no question in this case that
19 transportation, busing, student busing is
20 services.

21
22 So these common law cases from the 1800s have
23 no applicability and they are certainly not
24 controlling in this case and Counsel made a big
25 point of how we didn't refute some of his
26 allegations. We put that in our brief. He hasn't

1 refuted that in his response to us. There is
2 no law. He hasn't come back and cited the statute
3 showing what procedures were required of us in
4 the procurement process. We have put forward
5 affidavits. By contrast. We have put forth
6 affidavits from numerous individuals who were
7 directly involved with this procurement process.
8 We put forward Mr. Kevin White who is the
9 director of procurement. That's attached to our
10 brief at Exhibit 3. He ran this procurement
11 process except that he speaks from his own
12 personal knowledge of what was done and what
13 happened here.

14 They make all kinds of allegations and we
15 will talk about them briefly. He refutes those.
16 So does Mr. Glaster who has produced an
17 affidavit under tab-1 to our -- these are people
18 who have absolute personal knowledge and were
19 involved in this process themselves. They are
20 not depending upon information and belief, we
21 guess, we speculate, we think. That's not what
22 these are. These are people who were involved.

23 Let me also mention under tab-5, Your Honor.
24 It is the affidavit of Mr. Minnick. He is the
25 director of transportation for the DPS.

1 Intimately familiar with all of the details
2 of what happened here.

3
4 THE COURT: Just for the sake of
5 the record and my reporter Glaster, g-l-a-s-t-e-
6 r, . And it is Kevin White, w-h-i-t-e, and then
7 Mr. I'm not sure if it's going to be Rev. David
8 Duke, d-u-k-e, and reference to a m-i-n-i-c-k.
9 The last one is Richard Klaus, k-l-a-u-s. You
10 may proceed.

11
12 MR. MASSAQUOI: Your Honor another
13 point, Your Honor. The plaintiff simply ignores
14 the law in Michigan which cited on page 7 of our
15 brief, Great Lakes case which says there is a
16 presumption. The governmental authorities act in
17 good faith in the contract selection process. So
18 they have a hurdle to get over here Your Honor
19 which as we will show with point after point.
20 They have failed to come close to getting over.

21
22 THE COURT: I'm sorry. I do it now or my
23 court reporter will come back later. So it is
24 Great Lakes Heating, Cooling and Refrigeration
25 and Steel Metal Corp. versus Troy School
26 District 197 Mich App 312.

1 MR. MASSAQUOI: Your Honor, let's just
2 talk about this for a second. There is a litany
3 of factual allegations that plaintiff makes,
4 that plaintiffs make that is simply wrong.
5 Counsel already acknowledged one and it is
6 critical. He said that First Student had access
7 to the DPS and its employees and documents et
8 cetera for five months. Now he has announced
9 that no, it was only five weeks and that's
10 really important in this case and it is not
11 something that you just -- I mean I am not
12 accusing Mr. Jarrett of doing anything
13 intentional but what I'm saying is it is
14 important for the court to realize that that
15 particular amount of time is very significant
16 because they say that during that five weeks
17 that First Student had access to the DPS, it
18 gained so much information that it has an unfair
19 advantage in this process.

20
21 Well, let's think about that for one second.
22 They are claiming that with five weeks First
23 Student, and that's undisputed, five weeks of
24 access. They got more information than Mr.
25 Jarrett's client who worked for 35 years as a
26 contractor, eight bus contractors for the DPS.

1 Simply put, they get more information than
2 the company that has been -- who knows the
3 streets, who knows the students, who knows the
4 schools, who knows the ordinances, who knows the
5 details, who knows the gas stations, everything.
6 They got more information in five weeks --
7 that's what you have to believe to believe that
8 they got an advantage over First Student, I'm
9 sorry, over Safeway. It is not plausible and we
10 will go on with that. They alleged that First
11 Student drafted the RSP. Now Kevin White in his
12 affidavit which is attached under - to our brief
13 at -- Exhibit 3 states specifically that is
14 just not true. He states that -- it's cited in
15 our brief, Your Honor. The point is he's said
16 that he drafted it. So it wasn't First Student
17 that drafted it. Plaintiffs have absolutely no
18 way of knowing who drafted this. It is all just
19 supposition, innuendo, suggestion. They don't
20 know that.

21 Another allegation they make is that the DPS
22 limited vendors' view of First Student's report
23 to half an hour.

24

25 THE COURT: You are making reference
26 to Mr. White's affidavit?

1 It is not in the body.

2 MR. MASSAQUOI: It is in the
3 affidavit, paragraph 9.

4
5 THE COURT: When you are speaking,
6 paragraph 9 says the following:

7 Mr. White: Also contrary to the complaint
8 has alleged, First Student did not draft the
9 subject RFP. I did. Just so the record is clear.
10 Go ahead please.

11 MR. MASSAQUOI: Let me just roll
12 back, Your Honor, to that issue. A minute ago
13 we heard that Mr. Jarrett said well -- and look
14 at the RFP, it doesn't ask any questions about
15 the safety record of the bidders and wouldn't
16 you imagine that that should be there?

17 Well see the point is this. Mr. Jarrett
18 although the plaintiffs may want that to be in
19 the RFP, they don't get to write the RFP. The
20 DPS does and you don't get to overturn a
21 competitively-bid contract simply because the
22 RFP didn't contain the questions that you wanted
23 in it. And they haven't shown any law that
24 suggests that they have a right to have this
25 overturned because we didn't ask the questions
26 that they would have liked us to ask.

1 Additionally they talked about the safety
2 record and we will get back to that.

3 And the affidavits attached to our -- we
4 indicate First Student has 16,000 employees,
5 drivers and it transports four million children,
6 four million children a day. Safeway has 200
7 drivers, approximately. I would expect that
8 First Student might have had a few more troubles
9 and citations along the way. I don't think that
10 establishes any irreparable harm or that it will
11 happen here. There are a whole lot of questions
12 that are left unanswered and I note that the
13 court noted, the plaitiffs didn't attach a
14 single thing in their motion or their complaint
15 or their reply brief to suggest that this is
16 accurate.

17 They just said that, well, we didn't refute
18 it.

19 I remind everyone that the burden is on the
20 plaintiffs to meet the likelihood of success on
21 the merits and to get over the presumption that
22 this process was made in good faith which
23 clearly they just haven't done and haven't tried
24 to do.

25 They put in there again as we were saying,
26 they put in there -- they argue that Ms.

1 Whitlow was only given 30 minutes to review
2 First Student's report. That is flatly denied
3 by the affidavit of Kevin White who says they
4 were given as much time as they wanted. They
5 simply couldn't read -- couldn't remove the
6 document and they wouldn't let them photocopy
7 the document. That is what he says in his
8 affidavit.

9 Also, another point that we made, Your Honor
10 which plaintiffs completely ignored is that this
11 document was always available through FOIA. They
12 could have gotten it at any time they wanted to.
13 They just didn't. It even indicates that in the
14 document and they, they just didn't do it and
15 then they complained that they didn't have a
16 copy of it . But I noticed now when they come
17 to court they have a copy of it. So I don't know
18 where they got it but the point is they got it.
19 They have it and they could have gotten it at
20 any time and they want to blame the fact that
21 they didn't have First Student's report and they
22 want to blame it on the fact that now they make
23 the argument that well, if we had had First
24 Student's report we would have known all these
25 things and we would have been able to prepare a
26 more competitive bid. And that's why this whole

1 process was a sham because we didn't have
2 that information. We are going to go through
3 that.

4
5 First let me say however they say that Mr.
6 Burgess and Mr. Glaster opened sealed bids. Mr.
7 Glaster absolutely categorically denies that in
8 his affidavit and I don't know how that
9 plaintiffs could possibly know whether Mr.
10 Burgess and Mr. Glaster opened sealed bids. And
11 they don't state anything either in their
12 complaint or their motion that would even
13 establish a foundation for how they could
14 possibly know that.

15
16 They allege in their complaint that ABC will
17 be -- they say this whole process was designed
18 to push this contract to, First Student. It was
19 all a sham is what they said. Think about this,
20 Your Honor. First of all as I indicated before,
21 the emergency financial manager has total power.
22 He doesn't even have to put this contract out
23 for bids. He could put this for a no-bid
24 contract. He could have simply awarded the
25 contract to First Student right off the bat. So
26 to believe what the plaintiff is saying,

1 absolutely I stand by that. That's true. He
2 could have simply awarded it. There is no law in
3 Michigan that says he has to put a services
4 contract out for bid.

5
6 So now you have to believe that though he
7 could have just handed the contract to First
8 Student he said no, let's just create a sham
9 process and then set it all out and then we
10 subvert it just so that we can make it -- as I
11 said, an appearance that it was fair. He didn't
12 even have to make an appearance that it was
13 fair. He could've just given it to them and it
14 would have been all over. They have never
15 answered that, Your Honor. They argued that ABC
16 -- and they said they really wanted to push
17 this contract to First Student and they said
18 that First Student, just the fact that they
19 added ABC to the contract, they said, you know,
20 that's just another ploy because the truth is
21 they really were pushing it out to First Student
22 and they said that ABC will be acting under the
23 control of First Student.

24
25 The problem with that is, Your Honor, as we
26 indicated in our complaint, I mean in our

1 motion, and it is supported by affidavit of
2 Mr. Minnick, the contract hasn't even been
3 drafted yet. So how do they know that. How do
4 they know that ABC is going to be a de facto
5 subcontractor when nobody has seen the contract
6 yet?

7
8 I would like to go -- just a few other
9 issues on the likelihood of success.

10
11 THE COURT: Why don't we move on to
12 the other point.

13
14 MR. MASSAQUOI: Yes. They mentioned
15 -- I would have to mention, Your Honor, the
16 Whitlow affidavit which they made a point about
17 that.

18
19 As Your Honor pointed out, it is full of
20 hearsay. Ms. Whitlow simply talks about her
21 assumptions. She admits in that very affidavit
22 that she wasn't the lowest bidder. She admits
23 that her bid was \$3.5 million higher than the
24 lowest bidder. She talked about a number of
25 things. She lists six things in there which she
26 says were -- if she had only had this

1 information she would have been able to
2 provide a more competitive bid.

3 Let me ask you this, Your Honor and I will
4 cut through this just to get to a point that I
5 would like you to look at, please.

6 Can you look at the first RFP that was given
7 to you, I forget what exhibit we marked it this
8 morning when we started.. It is the document
9 that says, Request for Proposal across the top
10 and it says July down in the right corner.

11 THE COURT: Okay.

12 Let me look at the Whitlow affidavit for a
13 second.

14 In the Whitlow affidavit, Your Honor,
15 paragraph -- I'm sorry. It is at paragraph 20 -
16 - I want to get the right page. On page 4. Four
17 yes, she lists a number of things that she
18 said. If only I had this information from the
19 First Student report we could have really
20 submitted a more competitive bid and I ask you
21 to turn to -- I don't want to go through all of
22 them although I was prepared to do that. Under
23 D, sub-D it says -- where it says in Section 4
24 at page 7.

25 First Student had knowledge of DPS' unique
26 requirements for routing systems.

1 Okay potential vendors of the systems to
2 three companies. Bidders were required to set
3 up a routing system and include the price in
4 their daily rates.

5 Okay so she is saying that the DPS had unique
6 requirements for routing systems and she wasn't
7 able to get that information so she couldn't
8 submit, she couldn't submit a competent bid.

9 The problem with that is, Your Honor, I would
10 like you to please look at the first RFP which
11 you have in your hand on page 16 to 20 Your
12 Honor.

13 Do you see the heading, description of
14 routing and scheduling software requirement?

15
16 THE COURT: Yes.

17
18 MR. MASSAQUOI: So at 18, 19, 20,
19 DPS lays out in detail all of the requirements
20 that it's asking its vendors to submit to the
21 DPS for its routing system. I mean, they go on
22 for four single-spaced pages. All the details.

23
24 Now then of course we have, first of all we
25 have Safeway that says, well they didn't have
26 enough information about what they were supposed

1 to be providing to the DPS so they couldn't
2 possibly make a reasonable bid on the routing
3 system.

4

5 These kinds of things --

6

7 THE COURT: How much time -- how
8 much more time do you need? You keep on making
9 reference to the document. I stated at least 20
10 times I have read this stuff. I am not
11 admonishing you.

12

13 I just want to make sure you
14 understand.

15

16 Oral argument is a limited period of time.
17 Assuming the judge has read everything, it is a
18 limited timeframe in which you folks can be
19 persuasive. You can try and be persuasive. You
20 either refer to a particular proposition you
21 have. It is not the time to go over everything
22 that's already been filed. I read it. When you
23 say Judge please look at here, please look at
24 there, I have indicated I have seen it. I want
25 you to tell me in a couple of sentences or a
26 paragraph why I should not grant injunctive

1 relief that they are seeking. After you're
2 done, you have to argue as well. So I want
3 something brief.

4
5 MR. MASSAQUOI: Okay Your Honor, I will
6 do that. The only problem, that document was
7 never before Your Honor until this morning
8 that's why I went through it and I will cut it
9 short. I will do exactly what you said and I
10 will cut through it.

11
12 If you look at these documents and even the
13 ones that were submitted today you will see for
14 example this is probably the centerpiece of the
15 plaintiff's case which we have not discussed
16 before because it was raised in their reply
17 brief and we didn't raise it before because we
18 didn't have a chance to.

19
20 They are saying that they have attached this
21 document, this transcript of this
22 surreptitiously obtained discussion and saying
23 that showed that information was passed on to
24 Mr. Grant and here is why it doesn't show that
25 and here's why Counsel has failed to understand.

26

1 That conversation happened in February and
2 it is very important to understand February of
3 2010. It is very important for the court to
4 understand the chronology and I would have to
5 show you one more thing on this second RFP so
6 the court will understand why.

7
8 These contracts provide specifically that
9 after the final people, companies are awarded,
10 they can do further negotiations and this is --
11 these discussions were absolutely within the
12 rights of the party.

13
14 Your Honor, please indulge me this one thing.
15 Please look --

16
17 THE COURT: I am getting old now. I
18 want to make sure you said one thing.

19
20 MR. MASSAQUOI: This is very
21 important to my client and I just want to put --
22 I'm just trying to put --

23
24 THE COURT: I will give you the
25 unique attention I haven't given to anything

1 else because this one thing is going to be
2 the big thing. Go ahead.

4 MR. MASSAQUOI: One document.

5 Looking at this, please turn to page -- pages 12
6 and to page 14.

7 THE COURT: What documents?

9 MR. MASSAQUOI: Of the first RFP.

10 THE COURT: All right. I've got
11 it.

13 MR. MASSAQUOI: Okay the first RFP
14 -- you see where it says number four, process
15 for the award. It says DPS will award and
16 negotiate a contract to the responsible SP,
17 service provider whose offer best meets the
18 district's needs. It says that the combined
19 relative merit of the evaluation criteria
20 listed below will be used in the selection of
21 the VSP. DPS reserves the right to seek
22 clarification of information submitted in
23 response to the DPS. Also reserves the right to
24 make award without further discussion.

26 Now , Your Hoor, please look at page 14.

1 You see where it says four, Tab B. Okay
2 look at the second full paragraph. It says,
3 acceptance of a proposal by the Detroit Public
4 Schools does not constitute a contract. A final
5 contract document will be subject to
6 negotiations and DPS will approve execution of a
7 contract. And it says while the financial
8 responsibility of the proposal is a significant
9 concern, DPS is equally concerned with the
10 proven ability et cetera. The point being here
11 that after the final -- the RFP-1
12 went out,, it was withdrawn, they then made
13 RFP-2. . The two lowest bidders were ABC and
14 First Student and at that point the selection
15 had been made and then they were deciding
16 whether it would be just First Student or ABC
17 would be a contractor too. They had every right
18 under the RFP-2 to negotiate with Mr. Grant of
19 ABC to get him to lower his price and when he
20 lowered his price equal to that of First
21 Student, he also got a part of the contract.
22 They had every right to do it. And, Your Honor,
23 these contracts are very complicated and they
24 are very detailed. They are absolutely fair to
25 all parties and I want also, Your Honor if the

1 court would look at the second part of the
2 second RFP, page 9.

3

4 THE COURT: The first one is that
5 the one you want me to pay attention to?

6

7 MR. MASSAQUOI: Yes Sir.

8

9 THE COURT: I will try to do it. I
10 am moving.

11

12 MR. MASSAQUOI: No no, it's this
13 document. It should say December 16, 2009 in the
14 lower right-hand corner. It says Request for
15 Proposal.

16

17 THE COURT: It looks like either A-
18 -

19 MR. MASSAQUOI: It's an A.

20

21 THE COURT: That's what you mean by
22 second?

23

24 MR. MASSAQUOI: Yes, Your Honor.
25 That is the second Request for Proposal.

26

1 Ask the court to please turn to page 9.

2

3

THE COURT: Yes.

4

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MR. MASSAQUOI: All right you see where it says -- -- I am looking and it says 1, 2, 3. It says the district may offer the contract to one or more service providers.

So, the point is it doesn't have to take the lowest bidder alone. After an award is made it can take the two lowest bidders. It provided for that specifically in the RFP. Mr. Jarrett has just submitted that into evidence and he agrees this is the second RFP. The DPS had every right to offer a contract to both the lowest bidder and the second lowest bidder and they violated absolutely no rules in their own RFP process.

Your Honor, I will cut the rest of this just to say irreparable harm, I don't see what irreparable harm the plaintiffs have shown in this case at all. They went through a litany of things. They say in paragraph 41 of their complaint, they say things like the DPS will be obligated to First Student for five to 10 years. But that's not irreparable harm. The

1 public will lose Safeway as a student
2 transport service provider as if no other bus
3 company could possibly serve the public.

4

5 There will be loss of economy in the city of
6 Detroit.

7

Not irreparable harm.

8

9 And we heard about all the other things and
10 then lastly, Ms. Payne is going to lose her job.
11 I am not trying to mock, but the point is that's
12 not irreparable harm. It is certainly not
13 irreparable harm to the public and I daresay
14 it's not irreparable harm to Ms. Payne. People
15 lose their jobs every day. We all know that in
16 Detroit. But public interest, DPS is
17 hemorrhaging money as the affidavit of Mr.
18 Glaster points out, Your Honor. The DPS has a
19 \$100 million annual budget deficit. Every year
20 it operates, it goes \$100 million into the hole.
21 This one contract is saving the DPS \$10 million
22 a year by awarding it to First Student.

23

24

25

26

The DPS has a \$300 million debt and it's
facing receivership. Your Honor, the public --
the public has absolute interest in having a
viable healthy, fiscally sound public school

1 system and if we pose a harm, we talked about
2 plaintiffs haven't even shown any harm much less
3 even the right to come here and have standing.
4 The DPS is looking at this summer not having
5 contracts, not being able to move its 8000
6 summer school students, having to overturn this
7 entire applecort.

8 I think they haven't made a showing on any
9 one of the four tests to show a right to
10 injunctive relief, Your Honor.

11 Thank you.

12

13 MR. CLEMMONS: Very briefly, Your
14 Honor.

15

16 THE COURT: You're going to learn
17 from the wisdom of the others?

18

19 MR. CLEMMONS: I will be quick.

20

21 Detroit Public Schools will relay on the
22 argument of Defendant Bobb as set forth
23 independently. We would speak only in addition
24 to the first factor with respect to the
25 issuance of injunction, that is, the likelihood
26 of plaintiffs prevailing on the merits

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Just briefly, learned Counsel Jarrett made his argument on that point, he did not identify any of the statutory exceptions to governmental immunity which is provided to a governmental entity like the DPS under 691.1401.

That broad grant of immunity came long after the two cases which Mr. Jarrett cited from 1908, 1888 and the AmJur. That immunity is to be granted broadly, accepted narrowly and within his pleading no exceptions are pleaded. He has a duty to plead an avoidance. So we have complete immunity as it pertains to Detroit Public Schools and with respect to that particular factor, since he cannot prevail on that one then the injunction should be denied in total.

THE COURT: Anything else?

MR. JARRETT: May I respond, Your Honor, briefly?

THE COURT: Yes. Now this will be your last opportunity. You cited in your brief and started out in your brief using the two cases. The one I was looking at, the one I must look at. I asked you to go ahead and take a look at those now that you have had the advantage of hearing the other side in terms of

1 their position and indicating their
2 positions. They are showing you what they
3 allege to be weaknesses in your position. So you
4 may want to go over these briefly and the court
5 will then render its opinion.

6

7

MR. JARRETT: Thank you Your Honor.

8

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First of all, I don't know if Mr. Massaquoi
is really familiar with the governmental
immunity statute. Mr. Clemmons used to work in
my office. I know he is familiar with it. The
immunity statute has nothing at all to do with
these proceedings. It grants immunity from tort
liability. We are not here seeking to sue on a
tort claim and we are not seeking money damages.
Mr. Bobb is not immune from anything which this
Court may exercise its equitable powers over and
Mr. Bobb is not -- contrary to Counsel's
statement, absolutely empowered to do anything
he wants. He grants -- he grants, his authority
is granted or is derived from the statute under
which the governor appointed him and because his
powers are statutorily derived, Your Honor, he
must do anything that he does with an ethical,
lawful and fair and with fairness as the
underlying principle in everything that he does.

1 Now Counsel cited that there is no
2 requirement that competitive bidding be -- that
3 services for public entities be for school
4 districts.

5
6 Counsel tried to suggest that it was related
7 only to the DPS.

8
9 School districts are not required to offer
10 contracts for competitive bidding when the
11 contracts relate to services. Mr. Massaquoi is
12 correct about that but that doesn't mean that if
13 you opt to, if you elect to submit a particular
14 contract to competitive bidding that you can
15 thereafter operate the process in an unfair
16 manner. So the fact that he wouldn't have been
17 required to do competitive bidding doesn't mean
18 he can do competitive bidding in a selective
19 way.

20 Counsel also suggested that the First Student
21 report could have been obtained by FOIA. Well,
22 in fact that is how we got to the report. The
23 fact of the matter is at the time the bids were
24 being submitted and prepared, there were
25 deadlines and by withholding the report, they
26 withheld the information. Then when the final

1 request comes, of course, the school district
2 just turns it around the day after and sends it
3 out. They have five days to respond and they
4 can extend it for an additional 10 days. It has
5 15 days before they're even late in responding
6 and after that point you have exhausted much of
7 the time that is required for preparation.

8
9 So by withholding the information, there were
10 clearly things that First Student knew that the
11 other bidders did not know and could not take
12 into account. Similarly, I think the reference
13 to the routing system is misleading. First
14 Student knew there were three specific
15 manufacturers by manufacturer and routing number
16 and serial number that would work. So these
17 several pages of this is what you're looking for
18 in a routing system still doesn't define that
19 there are only three that will work for DPS and
20 therefore the other bus companies that were
21 bidding had to try to find the various different
22 models that would work under this description.
23 So that's really a red herring, Your Honor.

24

25 Responding to the court's inquiry, I believe
26 that when you have a tainted process, whether it

1 is statutorily required or not, when you
2 undertake to do it this way, you have to do it
3 fairly. Once you don't do it fairly, once there
4 is not an even playing field, it must be set
5 aside.

6
7 I think we have demonstrated that the process
8 was tainted from the beginning and it was
9 slanted from the beginning throughout and in
10 favor of First Student.

11
12 Mr. Grant himself said it. He was only
13 brought in as a token. Detroit-based company --
14 after the decision had already been made to
15 award the contract to First Student.

16 I think that with respect to the plaintiffs
17 Counsel accuses me of not reading something. He
18 didn't read the first paragraph of the
19 complaint, the verified complaint signed under
20 oath by each of the plaintiffs.

21
22 The first paragraph of the verified complaint
23 identifies what the Detroit Board of Education
24 Advisory Council is, how it came to be and what
25 it does.

26 The second paragraph identifies Ms. Payne and

1 her standing as a taxpayer both as a home
2 owner and an income tax payer.

3 The brief that I filed, the supplemental
4 brief that I filed a week and a half ago
5 addresses their standing, Your Honor. So the
6 fact that I didn't repeat it in this reply brief
7 doesn't mean that I didn't address it. The case
8 law that I cited in the initial brief makes it
9 clear that the competitive bidding process is a
10 process which is done in favor of the public
11 and the individual taxpayers and it has standing
12 to challenge it and frankly, I think to suggest
13 that people lose their jobs every day, that's
14 true. It is something I acknowledge in my reply
15 brief. But when you lose your job to a tainted
16 bid process when those who would undertake it
17 had an obligation ethical and legal obligation
18 to do it in a fair manner, then you have
19 standing to complain. Not just Ms. Payne but all
20 of the bus drivers who are about to lose their
21 jobs.

22 And finally, Your Honor, and I do believe I
23 mean the real finally.

24 Counsel suggests that there is a difference
25 between five month access and five week access
26 and I have to concede there is. And there was --

1 I wasn't misinformed. It was just an error on
2 my part when I drafted the complaint which I
3 brought to your attention last week and at the
4 beginning of proceedings this morning. Five
5 weeks access of one company to the exclusion of
6 any access to any other company is clearly one-
7 sided and the fact of the matter is Safeway has
8 provided services for 35 years but never had
9 such access. They executed the plan that DPS
10 created internally. They did the assignment
11 given to them . They didn't suggest changes.
12 They weren't asked their opinions. They never
13 inspected anything so their execution of the
14 DPS-created operational plan over 35 years
15 doesn't give them the information that Safeway
16 had -- excuse me, that First Student had in five
17 weeks and that is unprecedented access. It would
18 not even be fully reflected in the report even
19 if the report had been handed to all of the
20 bidders initially.

21 THE COURT: All right folks, the
22 court is ready to render its opinion and I will
23 be addressing it to the lawyers but obviously to
24 you in the audience deserve to also be aware of
25 what it is.

26 RULING OF THE COURT

1 The issue is a big issue and I will it
2 obviously impacts on all of our lives one way or
3 another.

4 The case before me now is essentially one of
5 injunctive relief on and it is not a final
6 determination on the merits of the case.

7
8 The decision today will be presented based upon
9 the evidence presented to me, the arguments
10 presented to me and the legal support thereof.

11
12 It will also consider obviously the fact that
13 certain evidence has not been presented or is
14 lacking or is not sufficient.

15
16 There at this point has not been -- and I
17 assume the parties are ready for my decision, am
18 I correct?

19 (Agreement by all counsel)

20 THE COURT: There has not been at this
21 point the following with the exception of the
22 documents that were given to me this morning
23 and I reviewed them sufficiently to make my
24 call. There has been no other request to
25 supplement, no other request to receive any
26 other evidence there has been no request to

1 adjourn. In fact the parties have just
2 indicated to me that they are prepared to
3 have the court render its opinion and I will
4 do so.

5
6 I will do so having considered everything. I
7 will do so having listened to the lawyers.
8 I don't want anything reflected in the
9 perception here that because I have asked
10 lawyers to speed it up that I am somehow rushing
11 to judgment. That is not the issue. The lawyers,
12 respectfully, lawyers will argue as long as you
13 let them. But the length of the argument does
14 not mean that those positions justify what they
15 are asking for. And so that's why as you will
16 recall when the case was first called before me,
17 I told the lawyers, these are the cases that I
18 am looking at. These are the elements I am
19 looking at. And my suggestion: Give me what
20 you think I need to make the call. From that
21 particular standpoint, the court is proceeding.

22

23 I will not be addressing everything that was
24 brought to my attention during the argument, I
25 will not be addressing, for example, the issue
26 of standing, I will not be addressing the issue

1 of governmental immunity. There are
2 obviously other pending lawsuits involved in
3 this matter that have been brought to my
4 attention and quite frankly there are issues
5 that are much much bigger than what's on my
6 plate today. And so my call is a narrow one.

7 The objective of a preliminary injunction is
8 to maintain the status quo pending a final
9 hearing regarding the rights of the parties.
10 Fancy vs. Egrin, 177 Mich App 714 .

11 MR. JARRETT: Could the court repeat the
12 cite? I am sorry.

13
14 THE COURT: I will start over again. I used
15 it before. I don't know if you were before me or
16 not. I will start all over again.

17

18 MR. JARRETT: I understand. I cited the
19 case in my brief.

20 THE COURT: You sure did.

21 A preliminary injunction may be ordered if
22 the court considers the following:

23 1. The likelihood that the party
24 seeking the injunction will prevail on the
25 merits.

26 2. The danger that the party seeking

1 the injunction will suffer irreparable harm
2 if the injunction is not issued.

3 3. The risk that the party seeking the
4 injunction would be harmed more by the absence
5 of an injunction than the opposing party would
6 be by the granting of relief.

7 4. And finally, the harm to the
8 public if the injunction is issued.

9 As you recall, Mr. Jarrett, I also cited
10 Alliance for the Mentally Ill vs. Department of
11 Mental Health 231 Mich App 647.

12 Plaintiff suggests they will suffer the
13 following harm if an injunction is not issued.

14 1. The operation of the transportation
15 by First Student which plaintiff claims has a
16 history of safety violations.

17 2. Being contractually obligated to
18 First Student without corresponding financial
19 benefits.

20 3. Loss of Safeway as a transportation
21 provider.

22 4. The perversion of the bid process.

23 5. The loss of economy within the City
24 of Detroit.

25 6. The loss of employment with respect
26 to the plaintiff Payne.

1 The safety of schoolchildren is of course
2 of paramount importance to the court and to
3 everyone else.

4 Plaintiff's complaint lists various
5 allegations of safety violations involving
6 First Student spanning several years. However,
7 the court cannot issue a TRO on the basis of
8 mere allegations alone.

9 Here plaintiffs have not presented credible
10 evidence that establishes or verifies current
11 safety violations that pose a direct threat to
12 Detroit schoolchildren.

13 Moving on to plaintiff's claim that
14 irreparable harm will result if DPS becomes
15 contractually obligated to First Student. The
16 court notes that defendants have submitted
17 substantial evidence regarding the financial
18 benefit of the contract with First Student.
19 Plaintiffs have not submitted any evidence in
20 support of their claim that the contract with
21 First Student would not be financially
22 beneficial. Similarly plaintiffs have not
23 submitted evidence that Safeway is
24 overwhelmingly superior to First Student such
25 that the services contract constitutes
26 irreparable harm.

1 With respect to plaintiff's allegations
2 regarding the unfair bidding process,
3 plaintiff's complaint states that the RFP
4 process and the defendants manipulated thereof
5 was improper, unlawful and fundamentally unfair.

6 In support of the general claim, plaintiffs
7 have submitted the affidavit of Patricia
8 Whitlow, the president of Safeway but the
9 relevant portions of that affidavit are
10 inadmissible. First, large portions of the
11 affidavit are hearsay or merely stating what
12 she heard from other various sources

13 We should say Whitlow's affidavit includes
14 references to a telephone conversation with
15 Charlie Grant, owner of ABC and another bidder.
16 There is no indication that Whitlow recorded
17 conversation with Grant's consent.

18 Recording a conversation without the consent
19 of another party is in violation of MCL 750.530
20 (9) (c).

21 In addition, the court has already cited two
22 cases for the proposition that it's illegal.
23 Actually I cited one case and that was the
24 People versus Stone. I gave you two cites. The
25 Court of Appeals cite and the Michigan Supreme
26 Court cite.

1 Certain portions of the affidavit are not
2 based on personal knowledge but instead mere
3 speculation.

4 For example in paragraph 7 Whitlow admits
5 she had not seen the First Student bid she
6 "doubts" it was \$5 million less than Safeway.
7 Plaintiff suggests that awarding the contract
8 to First Student would result in irreparable
9 harm to plaintiff; to the Detroit economy. .
10 Plaintiff has failed to elaborate on the claim
11 but economic injuries are not irreparable
12 because they can be remedied by the under-cited
13 law. Thermatool Corporation versus Borzym 227
14 Mich App 366.

15 Finally plaintiff argued that Barbara Payne
16 will suffer irreparable harm, she will lose her
17 job at Safeway. The loss of job constitutes
18 economic harm.

19 Again economic injuries are not irreparable
20 because they can be remedied at law. Again,
21 Thermatool Corporation Inc.

22 For the reasons stated above, plaintiff has
23 failed to establish irreparable harm. Plaintiffs
24 have also failed to demonstrate likelihood of
25 success on the merits. As the defendants point
26 out, plaintiff's complaint does not state any

1 specific claim of defendants based on the
2 alleged improper bidding process. The
3 plaintiff's only specific claim is for
4 injunctive relief however as previously stated,
5 plaintiffs have not established irreparable
6 harm and therefore have not demonstrated
7 likelihood of success on the request for
8 injunctive relief.

9 The risk of harm to the plaintiff if an
10 injunction is not entered is equal to the harm
11 defendants will suffer if the request for
12 injunction is granted. Both sides have issues
13 here at stake. Plaintiffs have jobs of Safeway
14 at issue while the defendants are attempting to
15 reduce the staggering debt of the Detroit Public
16 School system.

17 With respect to the harm to the public
18 interest if an injunction is issued, the
19 defendants have presented evidence that the
20 public has an interest in reducing the cost of
21 the DPS. Defendants have demonstrated that the
22 First Student contract will result in
23 significant savings to DPS and have therefore
24 made a strong argument that granting injunctive
25 relief will harm the general public.

26 Based on that, gentlemen, the request for

1 injunctive relief is hereby denied. Thank you
2 gentlemen.

3 MR. MASSAQUOI: Judge shall we prepare
4 an order or just say, 'for reasons stated in the
5 record'?

6 THE COURT: I can give you a blank form
7 now or if you wish you can prepare an order.
8 It's up to you. Do you want a blank order form
9 now?

10 MR. MASSAQUOI: I would rather work it
11 out. We will work it out.

12 THE COURT: Make sure it is reflective
13 of the court's ruling. All right take care.
14

1 STATE OF MICHIGAN)

2

3 COUNTY OF WAYNE)

4

5

C E R T I F I C A T E

6

7

8 I, KATHLEEN MAXWELL,

9

10 Official Court Reporter of the Third Judicial

11

12 Circuit Court, do hereby certify that the

13

14 foregoing pages all inclusive, comprise a

15

16 true, correct and complete transcript of the

17

18 proceedings in the matter of

19

20

21 DETROIT BOARD OF EDUCATION ADVISORY COUNCIL

22

23 -VS- ROBERT BOBB, ET AL

24

25 TUESDAY, MARCH 30, 2010.

26

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28

29

30 FRIDAY, FEBRUARY 26, 2010

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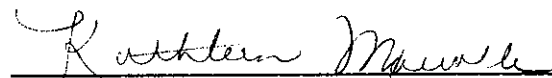
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1 STATE OF MICHIGAN)

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3 COUNTY OF WAYNE)

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C E R T I F I C A T E

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8 I, KATHLEEN MAXWELL,

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10 Official Court Reporter of the Third Judicial

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12 Circuit Court, do hereby certify that the

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14 foregoing pages all inclusive, comprise a

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16 true, correct and complete transcript of the

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18 proceedings in the matter of

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23 -VS- ROBERT BOBB, ET AL

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25 TUESDAY, MARCH 30, 2010.

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30 FRIDAY, FEBRUARY 26, 2010

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